

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7406 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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ISHWARBHAI B GOHIL

Versus

DIRECTOR (MEDICAL)

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Appearance:

Ms. Dave for MR MC BHATT for Petitioner  
MR DA BAMBHANIA for Respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 12/12/96

ORAL JUDGMENT

Rule. Mr.Bambhania,learned Addl.G.P. waives service of Rule on behalf of the respondents.

With the consent of the parties, the matter is taken up for final hearing today.

This Court in Special Civil Application

No.3682/84 had directed on 24.7.96 while passing final order that in case the respondents now intend to terminate the services of the petitioner, they will take into consideration the fact that the petitioner belongs to Scheduled Caste; that he continued to work for all these years may be under the interim orders of this Court and that if he is now thrown out of employment it will be difficult for him to secure another employment as he would have become over aged. Rule was made absolute in the aforesaid terms. After this decision dated 24.7.96 the respondents have now passed an order on 24.9.96 against the petitioner terminating his services mentioning therein that the petitioner's Special Civil Application No.3682/84 had been dismissed, which is factually incorrect. Learned Addl. G.P. Mr. Bambhania has candidly stated that this order dated 24.9.96 has been passed without application of mind. The learned counsel for the petitioner has also invited my attention to the order dated 30.1.90 passed by the Superintendent, J.Z.M.and N. General Hospital, Nadiad saying that the petitioner had been given a regular appointment as a Ward servant and the name of the petitioner in this order appears at Sr.No.28. The reading of this Court's order dated 24.7.96 shows that this order was not brought to the notice of the Court in the proceedings held in Special Civil Application No.3682/84. Be that as it may, it is clear that the order dated 24.9.96 has not been passed in conformity with the directions issued by this Court on 24.7.96 in Special Civil Application No.3682/84 and it further appears that the order dated 30.1.90 giving regular appointment to the petitioner as ward servant has also not been taken notice of by the author of the impugned order dated 24.9.96. In any case the services of the the petitioner, who has been continuing in service since 1983, could not be terminated without following the relevant procedure under the law including the provisions contained in S.25F of the Industrial Disputes Act,1947.

In the facts and circumstances of this case,I find that this order dated 24.9.96 cannot be sustained in the eye of law. Accordingly the same is hereby quashed and set aside. If at all the respondents intend to pass any order against the petitioner, before passing such order, the order dated 30.1.90 whereby regular appointment was given to the petitioner shall be taken into consideration; this Court's decision dated 24.7.96 shall also be taken into consideration in the correct perspective in letter and spirit and only thereafter it will be open for the respondents to pass any order after following the procedures prescribed under the laws, which

are applicable to the petitioner including the provisions under the Industrial Disputes Act,1947.

This Special Civil Application is accordingly allowed with the directions as aforesaid and the respondents are directed to reinstate the petitioner in service and treat him to be continuing in service as if the order dated 24.9.96 had never been passed against him. Orders with regard to reinstatement shall be issued on or before 31.12.96 and all consequential benefits shall also be paid to the petitioner for the intervening period at the earliest possible opportunity, but in no case later than a period of one month. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.